

No. 16083 ✓

United States
Court of Appeals
for the Ninth Circuit

MARIA DE LA LUZ VIRUETTE TORRES,
Appellant.

vs.

RICHARD C. HOY, Acting Director, Immigration
and Naturalization Service, Los Angeles, Cali-
fornia,
Appellee.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division

FILED

JAN 29 1958

PAUL P. O'BRIEN, CLERK



No. 16083

**United States
Court of Appeals**
for the Ninth Circuit

MARIA DE LA LUZ VIRUETTE TORRES,
Appellant.

vs.

RICHARD C. HOY, Acting Director, Immigration
and Naturalization Service, Los Angeles, Cali-
fornia,
Appellee.

Transcript of Record

**Appeal from the United States District Court for the
Southern District of California
Central Division**

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Answer	6
Attorneys, Names and Addresses of.....	1
Certificate by Clerk.....	17
Complaint	3
Decision	8
Findings of Fact, Conclusions of Law and Judgment	11
Notice of Appeal.....	16
Statement of Points Upon Which Appellant Relies	19

NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JACK SURINSKY,
216 Rowan Building,
458 So. Spring Street,
Los Angeles 13, California.

For Appellee:

LAUGHLIN E. WATERS,
United States Attorney;
NORMAN R. ATKINS,
Assistant U. S. Attorney,
600 Federal Building,
Los Angeles 12, California.

In the United States District Court in and for the
Southern District of California, Central Division

No. 1146-57—Y

MARIA DE LA LUZ VIRUETTE TORRES,

Plaintiff,

vs.

RICHARD C. HOY, Acting District Director of
the Immigration & Naturalization Service, Los
Angeles, California,

Defendant.

COMPLAINT FOR JUDICIAL REVIEW

Plaintiff, Maria De La Luz Viruette Torres, complains of defendant and for cause of action alleges:

I.

This complaint is filed and these proceedings are instituted against the defendant, pursuant to Title 28, U. S. C. A., Section 2201 and Title 5, U. S. C. A., for a judgment declaring that plaintiff is not deportable.

II.

The plaintiff is a resident of Los Angeles, County of Los Angeles, State of California, within the jurisdiction of this Court.

III.

The defendant, Richard C. Hoy, is the duly appointed, qualified and acting District Director in Charge of the Immigration and Naturalization

Service, Department of Justice, Los Angeles, California; that Louis L. Mattel, Special Inquiry Officer, Immigration and Naturalization Service, Los Angeles, California, and the members of the Board of Immigration Appeals, Washington, D. C., are, and at all times herein complained were, executive officials within the Department of Justice.

IV.

The plaintiff is a native and citizen of Mexico, 39 years of age, who was admitted to the United States for permanent residence on November 2nd, 1950; that she last entered the United States at San Ysidro, California, on or about August 19th, 1956.

V.

That the plaintiff herein was granted a hearing by the United States Immigration and Naturalization Service to show cause why she should not be deported from the United States; that pursuant to show order to show cause, hearings were accorded the plaintiff by Louis L. Mattel, Special Inquiry Officer, Los Angeles, California, and on April 4th, 1957, the said Louis L. Mattel rendered a deportation order that plaintiff be deported from the United States on the following grounds, to wit:

(1) That under section 241 (a) (1) of the Immigration and Nationality Act, the respondent is subject to deportation because she was excludable at the time of the entry, having procured a visa by fraud or wilful misrepresentation which is pro-

hibited by Section 212 (a) (19) of the Immigration and Naturalization Act.

VI.

On September 6th, 1957, the Board of Immigration Appeals, Washington, D. C., ordered that plaintiff's appeal from the decision of the Special Inquiry Officer, dated April 4th, 1957, holding the alien deportable be dismissed.

VII.

On or about September 17th, 1957, the defendant issued a letter directing plaintiff's deportation to Mexico, and the defendant through his subordinate officials, threatens to and intends to deport plaintiff from the United States.

VIII.

There is no reliable probative and substantial record confirming the charge that plaintiff obtained a visa by fraud or wilful misrepresentation; therefore, the deportation hearings accorded the plaintiff by the aforesaid Louis L. Mattel, was unfair.

Wherefore, plaintiff prays that the court review the record of her deportation proceedings and enter judgment that she is not deportable by reason of being excludable at the time of the entry for having procured a visa by fraud or misrepresentation.

/s/ JACK SURINSKY,

Attorney for Plaintiff.

Duly verified.

[Endorsed]: Filed September 30, 1957.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

The defendant above named by and through the undersigned answers the complaint on file herein as follows:

I.

Neither admits nor denies the allegations contained in paragraph I on the ground that said allegations are conclusions of law.

II.

In answer to paragraph II, defendant does not have sufficient information on which to base a belief and on that ground denies generally and specifically all the allegations contained therein.

III.

In answer to paragraphs III, IV, V, and VI, defendant admits the allegations contained therein.

IV.

In answer to paragraph VII of the complaint herein, the defendant denies the allegations contained therein and affirmatively states that the Immigration and Naturalization Service has not and will not take any action to remove the plaintiff from the jurisdiction of the Court during pendency of the within action.

V.

In answering the allegations contained in paragraph VIII, the defendant denies the same.

For a Further Separate and First Affirmative Defense to Said Complaint Defendant Alleges:

The plaintiff has been accorded a full and fair hearing in conformity with law to determine her right to be and remain in the United States. There will be offered in evidence when this cause is tried, a certified record of the Immigration and Naturalization Service, Department of Justice, relating to the plaintiff containing the complete record of the deportation proceedings before the Immigration and Naturalization Service.

For a Further Separate and Second Affirmative Defense to Said Complaint Defendant Alleges:

Plaintiff's complaint on file herein fails to state a claim upon which relief can be granted and this court can acquire no jurisdiction over this case for the reason that plaintiff has failed to abide by rule 8(a)(1) of the Federal Rules of Civil Procedure. Plaintiff's complaint cites Title 5 U.S.C.A. as the jurisdictional statute under which plaintiff proceeds. Title 5 contains many sections and statutes and the citing of Title 5, U.S.C.A., without designating a particular statute claimed as the jurisdictional basis for the action will not be sufficient to confer jurisdiction on this Court.

Wherefore, defendant prays for a judgment dismissing said complaint, denying the relief prayed for therein and for such other relief as to the court seems just and proper in the premises.

LAUGHLIN E. WATERS,
United States Attorney;

RICHARD A. LAVINE,
Assistant U. S. Attorney,
Chief Civil Division;

/s/ NORMAN R. ATKINS,
Assistant U. S. Attorney,
Attorneys for Defendant.

Affidavit of service by mail attached.

[Endorsed]: Filed November 26, 1957.

[Title of District Court and Cause.]

DECISION

The above-entitled petition to review heretofore tried, argued and submitted is now decided as follows:

The petition to review the Order of the Special Inquiry Officer dated April 4, 1957, that the plaintiff be deported from the United States on the following ground, to wit:

“(1) That under section 241(a)(1) of the Immigration and Nationality Act, the respondent is

subject to deportation because she was excludable at the time of the entry having procured a visa by fraud or wilful misrepresentation which is prohibited by Section 212(a)(19) of the Immigration and Naturalization Act.”

Affirmed by the Board of Immigration Appeals on September 6, 1957, notice of which was given to the plaintiff on September 17, 1957, is hereby dismissed and the said order of deportation is hereby affirmed.

Formal findings and Order denying the complaint for judicial review and dismissing the complaint to be prepared by counsel for the Government under local Rule 7.

Comment

The plaintiff was ordered deported as the result of a hearing before a Special Inquiry Officer on April 4, 1957, because she procured a visa by fraud or wilful misrepresentation prohibited by Section 212(a)(19) of the Immigration and Nationality Act, 8 U.S.C.A., § 1182(a)(19). Her complaint attacks the sufficiency of the evidence on which the order was based. A study of the entire administrative record convinces me that there is substantial evidence in the record to sustain the ground upon which deportation was based. Indeed her own admissions at the hearing, where she was represented by counsel, would alone be sufficient to show wilful fraud and misrepresentation.

When the record is considered as a whole the conclusion is inevitable that the order of deportation was "based upon reasonable, substantial and probative evidence." (24 (b)(4) Immigration and Nationality Act; 8 U.S.C.A., § 1101(b)(4). *Landon v. Clarke*, 5 Cir., 1956, 239 F.2d 630, 634-635; *Ablett v. Brownell*, U.S. App. D.C., 1957, 240 F.2d 625, 630-631; *Duran-Garcia v. Neely*, 5 Cir., 1957, 246 F.2d 287, 291-292.)

The representations she made were wilful and made for the purpose of concealing facts which otherwise might have resulted in denial of the visa. The fact that she was advised by others, whom she employed to advise her, to do so is unimportant. She accepted the advice because she was told she would otherwise not obtain the visa, and she followed it. So all elements of materiality, substantiality and wilfulness required by the law are present in this case.

Hence the ruling above made.

Dated this 14th day of April, 1958.

/s/ LEON R. YANKWICH,
United States District Judge.

[Endorsed]: Filed April 14, 1958.

United States District Court for the Southern
District of California, Central Division

Civil No. 1146-57—Y

MARIA DE LA LUZ VIRUETTE TORRES,

Plaintiff,

vs.

RICHARD C. HOY, Acting District Director of
Immigration and Naturalization Service, Los
Angeles, California,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW. AND JUDGMENT

The above-entitled matter having come on for trial on April 8, 1958, in the above-entitled Court before the Honorable Leon R. Yankwich, Judge, presiding without a jury; the plaintiff being represented by her attorney, Jack Surinsky; the defendant being represented by his attorneys, Laughlin E. Waters, United States Attorney; Richard A. Lavine and Norman R. Atkins, Assistants United States Attorney, by Norman R. Atkins; and counsel for the parties hereto having stipulated that a certified record of the Immigration and Naturalization Service be received in evidence, and the Court having received the same; and the Court having heard the arguments of counsel and having taken the within cause under submission; and the Court having reviewed the aforementioned record of the Immigration and Naturalization Service relating

to the plaintiff, and being fully advised in the premises, now makes the following Findings of Fact and Conclusions of Law:

Findings of Fact

I.

Plaintiff is an alien, a native and national of Mexico. Plaintiff last entered the United States at San Ysidro, California, on or about August 19, 1956, as a returning resident.

II.

On November 1, 1950, plaintiff applied for an immigration visa at Tijuana, Mexico. On November 2, 1950, plaintiff's application was granted; plaintiff was admitted for permanent residence at San Ysidro as a non-quota immigrant.

III.

On December 20 and December 26, 1956, a hearing in deportation proceedings was held; on April 4, 1957, a Special Inquiry Officer found that plaintiff was deportable on the following ground, and the Special Inquiry Officer made an order, to wit:

“(1) That under Section 241 (a)(1) of the Immigration and Nationality Act, the respondent is subject to deportation because she was excludable at the time of entry, having procured a visa by fraud or wilful misrepresentation which is prohibited by Section 212(a)(19) of the Immigration and Naturalization Act.”

IV.

Plaintiff appealed to the Board of Immigration Appeals. On September 6, 1957, the said Board of Immigration Appeals affirmed the decision of the Special Inquiry Officer. Notice of said affirmance was given plaintiff on September 7, 1957.

V.

The order of deportation described in paragraph III herein was based on reasonable, substantial and probative evidence; the said order of deportation was based on reasonable, substantial and probative evidence that plaintiff had procured the above-described immigration visa by fraud and by wilful misrepresentation of material facts.

VI.

The said order of deportation was based on reasonable, substantial and probative evidence that plaintiff had wilfully misrepresented, in obtaining the immigration visa described in paragraph II herein, the following: (1) That plaintiff was not a person previously deported, or ordered deported and permitted to leave the United States voluntarily under the order of deportation; (2) that she had not been arrested or indicted for or convicted of any offense; (3) that she was not a person previously excluded from the United States at a port of entry; and (4) that she had resided at the following places since the age of 14 years: Tala, Jalisco, Mexico, 1932-1946; Tijuana, Mexico, 1946-1950.

VII.

The misrepresentations described above in paragraph VI which plaintiff made were made wilfully and made for the purpose of concealing facts which otherwise might have resulted in denial of the above-described visa.

VIII.

The Immigration officials who acted in connection with the deportation proceedings relating to plaintiff had jurisdiction and authority to act.

IX.

The deportation proceedings relating to plaintiff were fair, were in accordance with the law and in accordance with plaintiff's constitutional rights.

Conclusions of Law

I.

This Court had jurisdiction of the within cause under the provisions of section 10 of the Act of June 11, 1946. (Administrative Procedures Act, 60 Stat. 243, 5 U.S.C.A. 1009.)

II.

The Immigration officials who acted in connection with the deportation proceedings relating to plaintiff had jurisdiction and authority to act.

III.

There is reasonable, substantial and probative evidence to support the decision of deportability,

the order of deportation outstanding against the plaintiff.

IV.

The deportation proceedings relating to the plaintiff were fair, were in accordance with law, and were in accordance with the plaintiff's constitutional rights.

V.

The representations described in paragraph VI of the Findings of Fact herein were made wilfully and made for the purpose of concealing facts which otherwise might have resulted in denial of the visa.

VI.

The fact that plaintiff may have been advised by others, whom she employed to advise her, to make misrepresentations is irrelevant and immaterial to the issues of the within action.

VII.

The order of deportation outstanding against the plaintiff is valid and the plaintiff is deportable pursuant to said order.

VIII.

Judgment should be entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's complaint, and awarding to the defendant his costs incurred herein.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law,

It Is Ordered, Adjudged and Decreed:

1. That judgment is hereby entered in favor of the defendant and against the plaintiff, denying the relief prayed for in plaintiff's complaint.

2. That the defendant have his costs incurred herein.

Dated: May 1, 1958.

Costs taxed \$20.00.

/s/ LEON R. YANKWICH,
United States District Judge.

Affidavit of service by mail attached.

Lodged: April 25, 1958.

[Endorsed]: Filed May 1, 1958.

Entered: May 2, 1958.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that Maria De La Luz Viruette Torres, Plaintiff, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Final Judgment entered in the above action on May 2nd. 1958.

Dated May 21, 1958.

/s/ JACK SURINSKY,
Attorney for Appellant.

[Endorsed]: Filed May 27, 1958.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled matter:

A. The foregoing pages numbered 1 to 30, inclusive, containing the original:

Complaint.

Answer to Complaint.

Plaintiff's Trial Memorandum.

Defendant's Trial Memorandum.

Decision of Court.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Designation of Record on Appeal.

B. Defendant's Exhibit "A."

I further certify that my fee for preparing the foregoing record, amounting to \$1.60, has been paid by appellant.

Dated: June 26, 1958.

JOHN A. CHILDRESS,
Clerk,

[Seal] By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 16083. United States Court of Appeals for the Ninth Circuit. Maria De La Luz Viruette Torres, Appellant, vs. Richard C. Hoy, Acting Director, Immigration and Naturalization Service, Los Angeles, California, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed: June 28, 1958.

Docketed: July 12, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 16083

MARIA DE LA LUZ VIRUETTE TORRES,

Appellant,

vs.

RICHARD C. HOY, Acting District Director of
Immigration and Naturalization Service, Los
Angeles, California.

Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT RELIES

Appellant sets forth the following points upon
which she intends to rely on appeal:

I.

The Court erred in finding and holding that the order of deportation made by the special inquiry officer "Subdivision 1." That under Section 241 (A) (1) of the Immigration and Nationality Act, the respondent is subject to deportation because she was excludable at the time of entry, having procured a visa by fraud or wilful misrepresentation which is prohibited by Section 212 (A) (19) of the Immigration and Naturalization Act." That said order and finding was based upon reasonable substantial and probative evidence.

II.

The Court erred in finding and holding that appellant had procured an immigration visa issued to her on November 2, 1950, by means of fraud and wilful misrepresentation.

III.

The Court erred in finding and holding that the aforesaid deportation order was based upon reasonable, substantial, and probative evidence that plaintiff had wilfully misrepresented, in obtaining the immigration visa the following: (1) That plaintiff was not a person previously deported or ordered deported and permitted to leave the United States voluntarily under the order of deportation; (2) That she had not been arrested or indicted for or convicted of any offense; (3) That she was not a person previously excluded from the United States at a port of entry; and (4) That she had resided at the following places since the age of 14 years: Tala, Jalisco, Mexico, 1932-1946; Tijuana, Mexico, 1946-1950.

IV.

The Court erred in finding and holding that the appellant made any such misrepresentations wilfully and for the purpose of concealing facts which otherwise might have resulted in denial of the aforesaid visa.

V.

The Court erred in finding and holding that deportation proceedings relating to plaintiff were fair

and in accordance with the law and plaintiff's constitutional rights.

VI.

The Court erred in holding that the Order of Deportation outstanding against appellant is valid and appellant is deportable pursuant to said order.

VII.

The Court erred in entering a judgment in favor of appellee, denying the relief that had been prayed for in plaintiff's complaint and awarding the plaintiff's costs.

Respectfully submitted,

/s/ JACK SURINSKY,

Attorney for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed December 20, 1958.

